

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 328 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BEDI GRAM PANCHAYAT

Versus

INDIAN POSTASH LTD.

Appearance:

MR PC KAVINA for M/S THAKKAR ASSOC. for Petitioner

MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 23/07/98

ORAL JUDGEMENT

By consent this appeal is admitted and taken up for final disposal today.

2. Heard. The impugned order dated 11/6/1998 rendered by the 4th Joint Civil Judge (S.D.) Jamnagar below application exh. 5 in Special Civil Suit No. 47 of 1998 concerns collection of octroi duty in respect of the goods brought within New Port area and Rozy Port area. The learned trial Judge granted the respondent no.1's application for interim injunction restraining the appellant from recovering octroi from the plaintiff or

the plaintiff's agents or servants in respect of the goods of the plaintiff being brought within the aforesaid areas.

3. The question before the trial Court was one of authority for making demand of the octroi and recovering the same and there being lack of material in respect of such authority, the trial Court appears to have granted the interim injunction. However, Mr. Kavina, learned advocate appearing for the appellant seeks to bring on record such authority in the form of permission granted by the respondent no. 2 - D.D.O. Jamnagar on 22/3/1994 and makes submissions arising from such authority before the trial Court. Mr. Lakhani has no objection for directing the trial Court to re-hear the application for interim injunction after giving appropriate opportunity to the plaintiff (respondent no.1 herein) of replying the additional stand coupled with the additional evidence sought to be placed on record before the learned trial Judge.

4. Hence, in the facts and circumstances of the case, following directions are issued :-

I. The impugned order as it stands will stand set aside with a direction that there shall not be recovery of the octroi till the trial Court re-hears the interim injunction application after the appellant places on record the additional material/additional facts and after the plaintiff (respondent no.1 herein) is given opportunity of dealing with such material either by way of affidavit-in-reply or producing any other material. After that process is over the learned trial Judge shall proceed to re-hear the interim injunction application exh. 5 and decide the same after hearing the learned advocates appearing for the parties before the trial Court and in accordance with law without being influenced by the impugned order in this appeal or by this order.

II. The appellant will move an appropriate application for bringing additional facts/material on record within a period of 10 days from today. The plaintiff will be given an appropriate opportunity of dealing with the same by granting reasonable time for that purpose. The trial Court will hear and decide the interim injunction application exh. 5 as expeditiously as possible, preferably within a period of one

month from the date on which the appellant files application for placing on record additional facts/material.

This appeal will stand disposed of in the aforesaid terms with no order as to cost.

Office to send writ of this order immediately to the trial Court.

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PVR ao32898j.